

Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING -- June 15, 1966

Appeal No. 8770 John Learmont, appellant

The Zoning Administrator of the District of Columbia, appellee

On motion duly made, seconded and unanimously carried, the following Order was entered by the Board at its meeting on June 22, 1966.

EFFECTIVE DATE OF ORDER: August 10, 1966

ORDERED:

That the appeal for a variance from the provisions of Paragraph 1302.2 to validate a subdivision of two lots into 3 lots creating a rear yard deficiency at 1704 - 35th Street, N.W. lot 15, Square S of S 1296, be denied.

From the record and the evidence adduced at the public hearing, the Board finds the following facts:

(1) Appellant's property is located in an R-3 District. The subject lot is improved with a two-story detached brick and composition frame dwelling.

(2) The property was originally two lots but was subdivided into three lots July 28, 1964.

(3) Appellant purchased the subject lot on February 21, 1966.

(4) On February 24, 1966, the Department of Licenses and Inspections forwarded a letter (Exhibit No. 11) to the then owner, Mr. John H. Martin, requiring that a rear addition to the premises 1704 - 35th St., N.W. be razed as not in compliance with the Zoning Regulations. The letter states that the subdivision was approved with an understanding that the rear addition would be razed to bring the premises into compliance with the Regulations.

(5) The original two lots were 9 and 10. Lot 9 had a 33 foot frontage on 35th Street and a depth of 120 feet and contained 3960 square feet of land. Lot 10 had a 27 foot frontage on 35th Street and a depth of 120 feet and contained 3240 square feet of land.

(6) As a result of the subdivision, Lots 15, 16 and 17 were created. Lot 15, the subject of this appeal, has a 33 foot frontage on 35th Street and a depth of 86.66 feet and contains 2859.78 square feet of land. Lot 16 has a 27 foot frontage on 35th Street and a depth of 86.66 feet and contains 2339.82 square feet of land. Lot 17 has a 33.34 foot frontage on R Street and a depth of 60 feet and contains 2000.40 square feet of land. The lots were all in one ownership at the time of the subdivision.

(7) As a result of the subdivision, lot 15 was left with a rear yard of only four (4) feet.

(8) Section 3304.1 of the Zoning Regulations requires that lots in the R-3 District be provided with 20 foot rear yards, and subsection 1302.2 states that in the course of subdivision no lot shall be created which is substandard in regard to yards, courts, lot area, lot width, etc.

(9) The record contains a memorandum from Mr. James J. Fahey, Assistant Zoning Administrator, relating the facts of the subdivision (Exhibit No. 12).

(10) There was opposition to the granting of this appeal registered at the public hearing. Seven (7) persons appeared at the public hearing to oppose the appeal. The Burleith Citizens Association, the Progressive Citizens of Burleith, and the Georgetown Citizens Association oppose this appeal. The record contains 5 letters from residents of the neighborhood opposing the appeal.

OPINION:

We are of the opinion that appellant has failed to prove a hardship within the meaning of the Zoning Regulations. The exceptional narrowness, shape, topography, and other extraordinary or exceptional situation or condition of the variance statute have to do with conditions found in the land itself, but in this case the hardship was created by the owner of the land. We are asked to validate the creation of an illegal lot, even though the facts imply that the owner was aware of the illegality of his creation. In addition, there is evidence that the owner agreed to make the lot conform to the Regulations by razing the rear addition.

Further, it is our opinion that the requested relief cannot be granted without substantial detriment to the public good and substantial impairment to the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

It would seem that there is some justification in the current owner's request for relief. However, the remedy does not lie with the Board of Zoning Adjustment. This appeal must be denied.